FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3977 OF 2005

Office notes, office Memoranda of appearances, Court's orders or directions & Registrar's orders.	: Coram, : : : :	Court's or Judge's Orders .

Mr. Madhav Jamdar for petitioner
Mr.S.S.Deshmukh h/f R.A.Thorat for R-1
Mr. A.M. Kulkarni for R-2(a) & 2(b).
Mr. M.H.Solkar, AGP.

CORAM: SMT. RANJANA DESAI, J.
26/8/05

P.C.:-

Petitioner is the original plaintiff. He filed Special Civil Suit No. 625/94 on 20/11/94 for specific performance of agreement of sale dated 18/2/80 entered into between him and respondent 1.

2. It appears that one Ramabai has filed Special Civil Suit No. 18/79 claiming partition and possession of certain properties. She claimed to be the absolute owner of the suit property. Respondent 1 was defendant 2 in that suit. Admittedly in Special Civil Suit No. 18/79 apart

from the property involved in Special Civil Suit No. 625/94, other property was also involved. Special Civil Suit No. 18/79 was dismissed on 3/5/97 and counter claim of the respondent was allowed.

4. Being aggrieved by the said judgment and order First Appeal No. 21/98 is filed by the said Ramabai in this court. The first appeal was admitted and the execution of judgment and decree in Special Civil Suit No. 18/79 is stayed. I am informed that the said first appeal is being heard by this court.

5. On 28/8/01 respondent 2(a) and (b) who are the heirs of defendant 2 in Special Civil Suit No. 625/94 filed an application under Section 10 of Civil Procedure Code for stay of hearing of Special Civil Suit No.625/94 pending final disposal of First Appeal No. 21/98. By the impugned order the stay application is allowed and hence this writ petition.

6. I have heard the learned counsel appearing for the parties.

7. Mr. Jamdar, learned counsel appearing for the petitioner contended that the trial court is concerned with the issue of non performance of the agreement and not ownership. He submitted that between the petitioner and respondent 1 there is no dispute about ownership and therefore, it was not necessary to stay Special Civil Suit No. 625/94.

8. I am not impressed by his arguments. The learned counsel for respondents 2(a) and (b) has drawn my attention to the issues framed in Special Civil Suit No. 625/94. One of the issues is whether defendant 1 had no legal right or authority to enter into the suit contract with the petitioner-plaintiff.

9. In view of this in my opinion, the trial court cannot be faulted for having stayed the suit. In any case since the first appeal is being heard

by this court, no interference is necessary with the impugned order.

10. Petition is rejected.

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